IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 503 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIRUDHSINH MAHIPATSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 503 of 2001

MR Y N Oza, Sr.Counsel for Mr YOGESH S LAKHANI

with Mr Tushar Mehta for Petitioner No. 1

Mr A D Oza, PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

RULE SERVED for Respondent No. 2,4

RULE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/11/2002

ORAL JUDGEMENT

The present petitioner has filed this present petition under Article 226 read with Articles 14 and 21 of the Constitution of India for appropriate writ, order or direction quashing and setting aside the order dated 25.10.2000 passed by the respondent-State which has been placed at Annexure 'A', page No.22.

2. The facts leading to the passing of the said order may be briefly stated as follows:

The petitioner herein was tried before the learned Addl.Sessions Judge of the TADA Court at Rajkot whereby the petitioner came to be acquitted. The State had preferred acquittal appeal before the Hon'ble Supreme Court since the offence involved was one under the TADA Act. The Supreme Court heard the said appeal of the State being SLP No.1982/91 with Criminal Appeal No.1919/96 and was pleased to allow the appeal of the State by judgment and order dated 10.7.1997. By the said judgment and order, the Supreme Court was pleased to convict the present petitioner for the offence punishable under section 302 of IPC and other offence and the petitioner was sentenced to suffer R.I. for life. Thereafter the State received certain communications from the Commissioner of Police at Rajkot dated 20.10.2000 as well as from the Superintendent, Ahmedabad Central jail dated 24.10.2000. On considering those communications, the respondent State passed an order dated 25.10.2000 which has been placed at Annexure 'A' page 22 and which is impugned in this petition. The said order of the State is the subject matter of this petition and, therefore, it is reproduced in full as follows:

" O R D E R

HOME DEPARTMENT
GOVERNMENT OF GUJARAT
Sachivalaya, Gandhinagar
Dated: 25.10.2000

Reference:

(1) Confidential letter No.RB/618/2599/2000 dt. 20.10.2000 from Commissioner of Police Rajkot.

(2) Confidential letter No.Judi/4436/2000 dt.24.10.2000 from Supdt.Ahmedabad Central Prison.

No.JLK/372000/2347/J

whereas Aniruddhsinh Jadeja convicted prisoner No.S/7548 (hereinafter referred to as the prisoner) has been undergoing Sentence under Section 302 of IPC, Section 3(2) and 5 of TADA Act and Section 25(1) of Arms Act. And whereas the prisoner is at present lodged in Ahmedabad Central Prison.

And whereas Commissioner of Police, Rajkot and Supdt.Ahmedabad Central Prison vide their letters quoted above has proposed to place the prisoner under 268(1) of CRPC and Government has considered them carefully.

Now therefore, in exercise of powers conferred by sub-section (1) of Section 268 of the Code of Criminal Procedure, 1973, and having regard to,

(a) the nature of the offence for which or the grounds on which, the person or class of person has been ordered to be confined or detained in prison,

(b) the public interest, generally.

The Government of Gujarat, hereby directs that Aniruddhsinh Jadeja the convicted prisoner shall not be removed from the Ahmedabad Central Jail."

3. The petitioner herein has challenged the aforesaid order of the State of Gujarat mainly on two grounds. The first ground of attack is that the order in question is not a reasoned order. It is also contended that only the provisions made in sub-section (2) of section 268 of the Criminal Procedure Code (for short, 'the Code') have been reiterated in the order. It is further alleged by the petitioner that the order is not a speaking one. On the aforesaid grounds, the aforesaid order is alleged to be illegal and is sought to be quashed and set aside. By the aforesaid order, the State has directed that the present petitioner shall not be removed from Ahmedabad Central Jail. This order has been passed in exercise of powers conferred by section 268 of the said Code.

4. After issuing notice and after hearing the State, the Court was pleased to issue Rule on 14.8.2001. In response to the service of notice of rule, Mr A D Oza, learned P.P. has appeared on behalf of the State and has argued the matter. He, in fact, appears and defends all the four respondents.

5. I have heard Mr Y N Oza, learned Sr.Advocate appearing with Mr Y S Lakhani for the petitioner and Mr A D Oza, learned P.P. for the State. It has been mainly argued by Mr Y N Oza, learned Sr.Advocate for the petitioner that the order dated 25.10.2000 which is impugned in this petition is illegal on the face of it on the grounds stated above. It is first contended by him that the order itself shows that the officer passing the said order had taken into account, two communications received by the State, one from the Commissioner of Police dated 20.10.2000 and another from the Superintendent, Ahmedabad Central Prison, Ahmedabad Central Prison dated 24.10.2000. It is also his argument that even the Commissioner of Police has based his report on mere news item published in local newspaper at Rajkot and, therefore, the State Government could not have passed the impugned order under section 268 of the Code simply on the said communication received from the Commissioner of Police at Rajkot.

6. On the other hand, the learned P.P. has contended that the Commissioner of Police at Rajkot did not merely depend upon the news item published in the local newspaper of Rajkot but he had undertaken an enquiry on the basis of the said news item and when the facts stated in the news item were found to be true, a written communication was submitted by the Commissioner of Police and that report was taken into account by the State for passing the order in question.

7. Even the petitioner has submitted copy of the said communication dated 20.10.2000 sent by the Commissioner of Police at Rajkot which is placed at page 23 at Annexure 'B'. The said communication suggests that the present petitioner was brought to Rajkot in connection with criminal case pending there on 19.10.2000. The petitioner was required in connection with C.R. No.472/98 involving offence punishable under section 201, 224, 25, 120-B and 114 of IPC which was registered before Pradyumnnagar police station, Rajkot. It is further stated in the said report of the Commissioner of Police that the petitioner was brought under the surveillance of SRP party. It is also stated

in his report that in presence of the said SRP party, the petitioner contacted several persons on mobile phone from the Court compound at Rajkot. It is further stated in the report that threat was given on mobile phone to a person by the petitioner in the court compound in presence of SRP. It is further stated that so many persons gathered together there to meet the petitioner at the place where the SRP party allowed the petitioner to meet them at the said place. It is further disclosed that on the basis of the news item published in the local newspaper, the Commissioner of Police made an enquiry to ascertain the said fact and it was found to be a true news item. On account of the aforesaid position, the Commissioner of Police also stated in the said report that on account of the aforesaid reasons, it would be necessary for the State to pass an appropriate order under section 269(1) of the said Code directing that the petitioner be not taken out of Sabarmati Jail at Ahmedabad.

8. Learned Sr.Advocate for the petitioner has argued that this Court should take into account the connecting papers in order to ascertain as to whether the order impugned in this petition is legal and valid. The learned P.P. had called for the relevant papers and had shown the file to the Court. On going through the initial papers of the said file, it is apparently clear that the office note was submitted before the competent authority before passing the aforesaid letter of the Commissioner of Police dated 20.10.2000. A letter from the Superintendent, Ahmedabad Central Jail dated 24.10.2000 was also placed before the competent authority. It seems that so far as the letter of Superintendent, Ahmedabad Central Prison dated 24.10.2000 is concerned, more or less it depends upon the letter of the Commissioner of Police dated 20.10.2000. It seems that the State Government has taken into account the fact that the petitioner was convicted for an offence of murder of one Popatbhai Sorathia, who was then a sitting MLA of Gujarat from Gondal Constituency. Learned P.P. has stated that the aforesaid murder was committed by the petitioner on 15th August when the flag hoisting ceremony was going on in a public place. It is also contended that after the Hon'ble Supreme Court allowed the appeal of the State and sentenced the petitioner for offence punishable under section 302 of IPC and for other offence and when the petitioner was sentenced to suffer imprisonment for life, the petitioner had absconded and was not available for more than two years. This aspect was considered by the State for passing the aforesaid order as per the argument of the learned P.P. for the

State. So far as the report of the Commissioner is concerned, it seems that the papers in respect of the enquiry said to have been conducted by the Commissioner of Police were not probably forwarded to the State. However, the competent authority considered the report of the Commissioner of Police for passing the aforesaid order and the Commissioner of Police seems to have made the said report on the basis of the news item referred to above and the enquiry made by him was in connection with the said news item. The main argument of Mr Y N Oza, learned Sr.Advocate for the petitioner is that the Court should call upon the State to produce the papers of enquiry said to have been conducted by the Commissioner of Police. When the State Government has passed its order on the basis of the report of Commissioner of Police referred to above and when the Commissioner of Police himself has stated that he had made an enquiry in connection with the aforesaid news items, then in my opinion, it is not necessary to insist upon production of the papers of enquiry said to have been conducted by the Commissioner of Police. Therefore, it is a fact that the State has passed the order on the basis of the news item and the said news item was followed by enquiry made by the Commissioner of Police also. This shows that there was some material before the competent authority while passing the order in question. It, therefore, cannot be said that the order is not a speaking order and that the said order has been passed without any reason. It is also required to be considered that Smt.R B Bara, Dy.Secretary, Home Department has filed affidavit in support of the case of the State Government. In para 4 of the said affidavit, it has been stated by her that the impugned order has been passed in public interest to place the petitioner under section 268(1) of the Code particularly in view of the likelihood of the disturbance of public peace, if he is allowed to be removed from the prison. It is also stated in para 6 that no fundamental rights of the petitioner are denied or violated by the State Government because in case of necessity for providing medical treatment or producing the petitioner before the Court, he can be removed from the Court on revocation of the said order temporarily if so required. This shows that necessary precautions appear to have been taken while passing the order in question.

9. The Learned Sr. Advocate for the petitioner has relied upon a decision of the Punjab & Haryana High Court in the case of Bhajan Vir Singh v. State of Haryana (1991 CRI.L.J.1311). There the observation is that an order under section 268 (2) of the Code can be passed excluding attendance of prisoners in Court by following

due process and such an order is required to be construed strictly. It is also stated that such an order should be self-contained and a speaking one.

10. Here it is true that the detailed facts are not incorporated in the order itself but when the order is required to be read in light of the background of the office notes and other materials on record, it can be said that the order in question is based on objective materials and it seems that the competent authority had subjective satisfaction on objective materials and therefore, it cannot be said that the order is not a speaking one and has been passed without any reason. Therefore, it cannot be said to be illegal on that ground.

11. The learned Sr.Advocate also relied upon another decision in the case of Surjit Singh v. State of Punjab & anr. by the Punjab and Haryana High Court (1988(1)SC 655). There the Court was required to deal with an order passed under section 268 of the said Code. There it was noticed that the Superintendent, District Jail had filed a return stating that no judicial remand of the petitioner Surjit Singh could be obtained in view of the order passed by the Punjab Government under Section 268 of the Code of the Code restraining his removal from the jail for production in the Court concerned. On the aforesaid aspect of the case, the High Court of Punjab and Haryana had observed in para 2 that there is a patent illegality in the detention of the petitioner, that it is well settled that no person can be detained in jail except in accordance with an order of detention passed against him by the competent Court, that the provisions of section 268 of the Code can by no means be construed or read to imply that any person in respect of whom, an order passed thereunder operates, can be detained without a specific order of detention being passed against him by the competent Court. It is further observed that in the absence of any such order, the Jail Superintendent must of necessity be directed to release the petitioner forthwith.

12. Facts of the said case were quite different. Moreover, the question of judicial remand or police remand has not arisen in the present case. Further, the State Government has taken precautions as stated in para 6 of the affidavit that appropriate order can be passed if the petitioner is required to be taken out of jail for medical treatment or for production as per order of the Court. Moreover, section 268 (1) of the Code does not require that there should be an order of detention.

Moreover, the facts in this case are totally different. So far as the case in which the petitioner has been convicted is concerned, the same has been finalised by the final judgment and order of the Supreme Court and, therefore, so far as that case is concerned, it has come to an end and no further process is required to be undertaken in respect of that case. So far as the other case against the petitioner is concerned, the State has made it clear that appropriate order can be passed with a view to provide medical treatment to the petitioner or for production of the petitioner in accordance with the order of the Court. Therefore, even on that ground the order in question cannot be said to be illegal. Learned P.P. had also drawn my attention to para 9 and 10 of the judgment passed in LPA No.807 of 2001 with Misc. Criminal Application No.6318 of 2001 passed by this Court on 11.9.2001. It would be appropriate to refer to the said observations made in paras 9 and 10 hereunder for ready reference:

"9. Prisoners are no doubt human beings and humane approach is required in dealing with them. Punishment imposed on them should have reformative influence and they are not to be turned out to be hardened criminals after completion of the sentence. Power to grant parole is executive in nature. Discretion has to be exercised in accordance with Rules and on settled guidelines. It has not to be exercised arbitrarily. If it is exercised arbitrarily without taking into consideration the relevant facts and aspects, there can be scope for interference by court. But since power has to be exercised in relation to a prisoner by the prison authority and when this power has been exercised on considerations which are found to be relevant, judicial interference is not called for. It was an error on the part of the learned Single Judge to have substituted his own discretion for the discretion exercised by the State and the prison authorities. In the matter of grant or refusal of parole, greater latitude is required to be given to the authorities as they alone know the actual situation of the prisoner and surrounding social atmosphere. The very fact that the learned Single Judge thought it fit to impose such stringent conditions for security and escort of the prisoner for release on parole, indicates that the State Government was right in refusing parole.

10. Learned Advocate General was fair enough in suggesting that if it is a question of sentiment in meeting the members of the family in bereavement, prison authorities would allow the widow of the deceased brother of the prisoner and his other nearest relatives to meet the prisoner in the prison for a period longer than generally allowed to prisoners under the Prison Rules."

The said matter related to a different set of facts. There the order under section 268(1) of the Code was not challenged. However, the fact remains that the aforesaid observations were made by this Court while disposing of the said LPA of the State. In my opinion, it is not very much necessary to discuss the said observations in detail.

13. In above view of the matter, I am of the opinion that the order impugned in this petition cannot be treated to be illegal on the ground argued on behalf of the petitioner by the learned Sr.Advocate. Therefore, there is no merit in this petition and consequently, it deserves to be dismissed.

14. For the foregoing reasons, this petition is ordered to be dismissed. Rule discharged. Interim relief stands vacated.

22.11.2002 [D P Buch, J.]
msp